COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Proceeding by the Department of Telecommunications and Energy to conduct mandatory thousands-block pooling trials and other number conservation measures pursuant to the authority delegated by the Federal Communications Commission	DTE 01-33

MOTION OF CTC COMMUNICATIONS CORP. FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION

CTC Communications Corp. ("CTC") hereby requests that the Department of Telecommunications and Energy (the "Department") grant protection from public disclosure of certain confidential, competitively sensitive and proprietary information submitted by CTC Communications Corp. in this matter in accordance with G.L. c. 25, § 5D. Specifically, CTC -public" version of the Request for Waiver of NANPA's Denial of CTC Communications Corp.'s Request for Two 1,000 DID Number Blocks and supporting Exhibits A, C, and E be granted protective treatment because they contain competitively sensitive and proprietary CTC information. The Request for Waiver and Exhibit A contain the customer name and information regarding their service. Exhibits C and E contain specific data relating to CTC's number utilization and forecasted growth in the subject rate center.

CTC has already provided these materials to the Department and has provided a "public version" of the Request for Waiver to the DTE 01-33 Service List. If these materials, excluding the "public version", are placed in the public record, however, CTC's competitors would be able

I. LEGAL STANDARD

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part that:

> The [D]epartment may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

The Department has recognized that competitively sensitive information is entitled to protective status. *See, e.g., Hearing Officer's Ruling On the Motion of CMRS Providers for Protective Treatment and Request for Non-Disclosure Agreeement,* D.P.U. 95-59B, at 7-8(1997) (the Department recognized that competitively sensitive and proprietary information should be protected and that such protection is desirable as a matter of public policy in a competitive market).

II. ARGUMENT

The Request for Waiver and Exhibits A, C, and E contain competitively sensitive and proprietary information belonging to CTC and its end-user customer. This information is not publicly available and is not considered public information. These materials provide the customer name, their current and future locations and service types. In addition, these materials contain information regarding CTC's current number utilization and forecasted growth. Competitors could use this valuable commercial information to their own advantage. Thus, these

First, the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. §§ 151 *et seq.*, provides protection for the confidential and proprietary information of telecommunications carriers. *See* 47 U.S.C. § 222. Among other things, Section 222 protects "customer proprietary network information", which includes the "technical configuration, type, [and] destination" of telecommunications service subscribed to by any customer of a telecommunications carrier. The Request for Waiver and Exhibit A include the customer name, the location, type of service, and phone numbers requested, the reason for needing additional service, the location of current services provided to the customer by CTC, and related actions which the customer intends upon receiving the additional service. These documents, therefore, contain customer proprietary network information. Pursuant to Section 222, not only must every telecommunications provider "protect the confidentiality of proprietary information of, and relating to, … customers," 47

> a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall *only* use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.
>
> 47 U.S.C. § 222(c) (emphasis added)

Thus, because these documents contain customer proprietary network information, CTC is required to safeguard this material. The customer has not authorized the disclosure of this information.

Second, Exhibits C and E identify CTC's available phone numbers, current utilization,

would allow competitors to target a specific geographic area or the specific customer for competitive marketing. The Department has recently recognized that the identification of wire centers with the number of business lines within each wire center deserves proprietary treatment in order to avoid anti-competitive targeting and prevent competitors from gaining an unfair competitive advantage. *See Interlocutory Order on Verizon Massachusetts' Appeal of Hearing Officer Ruling Denying Motion for Protective Treatment*, D.T.E. 01-31(August 29, 2001)("Interlocutory Order") at 9 (directing Verizon to provide for public disclosure a response that redacted the wire center identification in order to alleviate the possibility of anti-competitive targeting); *Hearing Officer Ruling on Verizon Massachusetts' Motions for Confidential Treatment*, D.T.E. 01-31 (August 29, 2001) ("HO Ruling") at 6 (granting Verizon motion in part) (same).

In comparison, on October 22, 1999, in D.T.E. 98-57, Verizon sought protective treatment of information relating to the location of collocation arrangements, arguing that "[w]here carriers choose to establish collocation arrangements or situate their POTs not only identifies where their facilities are located, but more importantly may provide valuable insight into where their customers reside or where they are focusing their competitive marketing efforts, thereby giving competitors an unfair business advantage." *See* Bell Atlantic's Motion for Confidential Treatment, D.T.E. 98-57, at 3 (October 22, 1999). Significantly, in an Order dated November 5, 1999, the Department agreed with Bell Atlantic and ruled that the location by carrier of collocation arrangements in each central office, the number of POTs by carrier, and the number and name of CLECs with a single POT in a LATA which have their traffic switched

not be placed on the public record. *See Hearing Officer Ruling on Motion for Confidential Treatment by Bell Atlantic-Massachusetts*, D.T.E. 98-57 (November 5, 1999), at 5.

In regard to the present request for protective treatment, the information sought to be protected is just as sensitive as the location of collocation arrangements. Whereas the location of collocation locations "may provide valuable insight into where their customers reside," public disclosure of the customer's name, location, and service requirements will give competitors an unfair business advantage. In addition, public disclosure of information which identifies CTC's number utilization and forecasted growth in a particular location would allow competitors to develop a strategy to frustrate CTC's efforts in the competitive market.

Finally, this information is not readily available to competitors and would be of value to them in developing competitive market strategies. Competitive disadvantage is likely to occur if the information sought to be protected is made public. The benefits of nondisclosure, and associated evidence of harm to CTC, outweigh the benefit of public disclosure in this instance. By releasing this information to the public, competitors will be able to utilize this information to focus in on specific CTC customers and to develop and market offerings in direct competition with CTC. Given the increasingly competitive nature of the telecommunications industry, the Department should not depart from its past practice and apply G.L. c. 25 § 5D to permit competitors to gain access to what is private, commercial information. In balancing the public's "right to know" against the public interest in an effectively functioning competitive marketplace, the Department should continue to protect information that, if made public, would likely create a competitive disadvantage for the party complying with regulatory information requirements.

Thus, the Request for Waiver of NANPA's Denial of CTC Communications Corp.'s Request for Two 1,000 DID Number Blocks and supporting Exhibits A, C, and E should be granted proprietary treatment and should not be placed in the public record.

CONCLUSION

For these reasons, CTC requests in accordance with G.L. c. 25 § 5D that the Department grant protective treatment to the Request for Waiver of NANPA's Denial of CTC

s Request for Two 1,000 DID Number Blocks and supporting Exhibits A, C, and E.

Respectfully submitted,

CTC Communications Corp.

_____

William E. Ward
Manager of Regulatory Affairs
CTC Communications Corp.
360 Second Avenue, Suite 1
Waltham, MA 02451
(781) 487-5558

August 12, 2002